

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

July 23, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

JESSE L. BARELA,

Petitioner - Appellant,

v.

A.W. JACKSON, Warden, in his
individual capacity; SONYA K. CHAVEZ,
USMS; DONALD W. WASHINGTON,
Director, USMS,

Respondents - Appellees.

No. 21-2040
(D.C. No. 1:21-CV-00240-WJ-CG)
(D. N.M.)

ORDER AND JUDGMENT*

Before **HARTZ, KELLY, and McHUGH**, Circuit Judges.**

Petitioner-Appellant Jesse L. Barela appeals from the district court’s dismissal of his 28 U.S.C. § 2241 habeas petition. Mr. Barela is currently in custody at Cibola County Correctional Center awaiting trial on federal charges related to an armed robbery. On March 18, 2021, he filed a § 2241 petition requesting that the district court set a bond hearing or release him from custody based on seven grounds of

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

relief. R. 3–13. The district court dismissed the petition without prejudice concluding that a § 2241 petition is not appropriate for a prisoner awaiting trial and because Mr. Barela had not exhausted his claims before the district judge presiding over his case. See Barela v. Jackson, No. 21-cv-240 WJ-CG, 2021 WL 1267914 (D.N.M. Apr. 6, 2021); R. 29 (Final Judgment). We affirm the district court’s decision.

Generally speaking, “§ 2241 is not a proper avenue of relief for federal prisoners awaiting federal trial.” Medina v. Choate, 875 F.3d 1025, 1029 (10th Cir. 2017). While Mr. Barela does allege constitutional and statutory violations, see § 2241(c)(3), the proper course of action is to “proceed[] by motion to the trial court, followed by a possible appeal after judgment, before resorting to habeas relief,” Medina, 875 F.3d at 1029. This is consistent with our rule that a federal pretrial detainee typically “must exhaust other available remedies” in order to be eligible for relief under § 2241. Id. at 1028 (quoting Hall v. Pratt, 97 F. App’x 246, 247 (10th Cir. 2004)); see Ray v. Denham, 626 F. App’x 218, 219 (10th Cir. 2015).

Here, Mr. Barela did not raise most of his claims to the presiding district judge when he filed his § 2241 petition. The docket reflects that he did not file any motions regarding the district judge’s delegation of authority, the Warden Act of 2005, the alleged absence of a bond hearing, excessive bond, concerns over COVID-19 reinfection, or the Foreign Immunities Act. See Docket, United States v. Barela, No. 1:20-cr-01228-KWR (D.N.M. filed March 24, 2020). And while Mr. Barela did file a motion to hire new counsel, which relates to his claim of ineffective assistance,

the district court ultimately allowed him to seek out and hire new counsel. See id., ECF Nos. 58, 62. Therefore, the district court appropriately concluded that Mr. Barela is not entitled to habeas relief under § 2241.

AFFIRMED. Mr. Barela's motion to proceed IFP is DENIED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge